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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/705,967	11/03/2000	Jeff A. Josten	STL000039US1/1715P	5056

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SAWYER LAW GROUP LLP
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Palo Alto, CA 94303

EXAMINER

PANNALA, SATHYANARAYA R

ART UNIT	PAPER NUMBER
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2164

DATE MAILED: 02/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/705,967

Applicant(s)

JOSTEN ET AL.

Examiner

Sathyanarayan Pannala

Art Unit

2164

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2,3,5,6,8,9,11,12,14,15,17,18 and 23-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2,3,5,6,8,9,11,12,14,15,17,18 and 23-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. In view of the Substitute Appeal Brief filed on 11/30/2005, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

2. Applicant's Appeal Brief filed on 11/30/2005 has been entered. Claims 2-3, 5-6, 8-9, 11-12, 14-15, 17-18 and 23-28 are pending in this Office Action.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 14-15, 18, 25 and 28 are rejected under 35 U.S.C. § 101, because none of the claims are directed to statutory subject matter. Independent claim 25 deals with simple functional descriptive ideas. When functional descriptive material is recorded on an electromagnetic carrier signal is not statutory subject matter. See *Diehr*, 450 US at 185-186 and *Gottschalk v. Benson*, 409 U.S. 63,71-72(1972).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in

order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 2-3, 5-6, 8-9, 11-12, 14-15, 17-18 and 23-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haderle et al. (US Patent 6,185,699) in view of Watts et al. (US Patent 6,275,832) and in view of Smyk (US Patent 5,029,169).

7. As per independent claims 23-25, Haderle rendered by the following:
“determining that at least one computer system of the plurality of computer systems has failed” at Fig. 1, col. 5, lines 47-49;

Haderle does not teach specifically retaining locks at the time of restarting the system after failure. However, Watts teaches the following:

“retaining a plurality of locks held by the failed system in response to the failure” at Fig. 3, col. 7, line 65 to col. 8, line 14.

Thus, it would have been obvious to one ordinarily skilled in the art at the time of the invention, to have combined the teachings of the cited references because Watts’ teachings would have allowed Haderle’s method for media failure, provides the DMBS media recovery by installing a copy of the database and performing redo log applying processing against the copy (col. 1, lines 61-63).

Haderle and Watts do not explicitly teach using processor resources necessary to restart. However, Smyk teaches, “performing a restart operation on the failed system to free the retained locks using only shared processor resources

determined to be necessary for performing the restart operation" as to release the shared lock on that resource, there allowing the restarted processor to obtain an exclusive lock on the imaginary resources (Fig. 6, col. 7, lines 42-45). Thus, it would have been obvious to one of ordinary skill in the data processing art at the time of the invention, to combine the teachings of the cited references because Smyk's teachings would have allowed Haderle's method to provide reliable and dynamic strategy to detect failures in a plurality of software processes (col. 1, lines 45-48).

8. As per dependent claims 2, 8, 14, Watts teaches "allowing another system of the plurality of systems to retain the plurality of locks of the at least one system" at Fig. 3, col. 7, line 65 to col. 8, line 14.

9. As per dependent claims 3, 9, 15, Haderle teaches the following:

"allowing another system of the plurality of systems to restart the at least one system" at Fig. 1, col. 5, lines 53-54;

"allowing the at least one system to terminate in a normal fashion" at Fig. 2, col. 6, lines 49-54.

Watts teaches the following:

"recovering data being protected by the retained locks of the at least one system utilizing only the shared processor resources of the another system determined

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to be necessary for performing the restart operation" at Fig. 3, col. 7, line 65 to col. 8, line 14.

10. As per dependent claims 5, 11, 17, 22, Haderle teaches the following:
"providing a request to restart the at least one system" at Fig. 1, col. 5, lines 53-54;
"allowing the another system to detect the request" at Fig. 2, col. 6, lines 49-52;
"allowing the another system to restart the at least one system based on the request utilizing only the shared processor resources determined to be necessary for performing the restart operation" at Fig. 1, col. 5, lines 53-60.

11. As per dependent claims 6, 12, 18, Watts teaches "the plurality of locks comprise a plurality of data locks" (Examiner interprets locks are pertaining to data since they are pertaining to data transactions) at Fig. 3, col. 8, lines 6-13.

12. As per dependent claims 26-28, Haderle teaches "the necessary shared processor resources does not include enabling the failed system to accept new work." at col. 5, line 53 to col. 6, line 3. It is obvious that a failed system will not accept new work.

Response to Arguments

13. Applicants' arguments in the Appeal Brief filed on 11/30/2005 have been fully considered but they are moot in view of new grounds of rejection.

Conclusion

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sathyanarayan Pannala whose telephone number is (571) 272-4115. The examiner can normally be reached on 8:00 am - 5:00 pm.

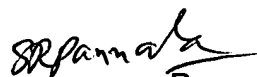
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Rones can be reached on (571) 272-4085. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Sathyanarayan Pannala
Examiner
Art Unit 2164

srp
January 30, 2006

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:


CHARLES RONES
SUPERVISORY PATENT EXAMINER